83-2165

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1983

PAMELA D. JONES and JENNIFER L. DODGE,
Individually and on behalf of all
other persons similarly situated,

PETITIONERS,

vs.

MICHAEL PETIT, Commissioner,
Maine Department of Human Services,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

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QUESTIONS PRESENTED

(1) Whether "income" as that term is used in 42 U.S.C. § 1396a(e)(1) refers to countable income, that is, gross income reduced by applicable disregards and deductions.

(2) Whether Congress intended, by virtue of 42 U.S.C. § 1396a(e)(1), to require States to provide four additional months of medicaid coverage to families terminated from the Aid to Families with Dependent Children (AFDC) Program because their countable income increased due to changes in the definition of countable income.

PARTIES TO THE PROCEEDINGS

The Petitioners in this action are Pamela D. Jones and Jennifer L. Dodge on behalf of themselves and all others similarly situated. The Respondent is Michael Petit, Commissioner of the Maine Department of Human Services.

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The opinion of the Maine Supreme Judicial Court was initially reported by the Reporter of Decisions as Decision No. 3473, Law Docket No. KEN-83-249 decided April 5, 1984. The decision is officially reported at 473 A.2d 879 (Me. 1984). The prior decision of the Maine Superior Court, Kennebec County Docket No. CV-82-314, decided June 8, 1983, is unreported. The opinions are set out in Appendix A and Appendix B respectively.

JURISDICTION

The Judgment of the Maine Supreme Judicial Court was issued and entered on April 5, 1984. Jurisdiction is conferred on this Court by 28 U.S.C. § 1257(3).

STATUTES

This case involves the interpretation of 42 U.S.C. § 1396a(e)(1) which provides:

> Notwithstanding any other provision of this subchapter, effective January 1, 1974, each State plan approved under this subchapter must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of subchapter IV of this chapter in at least 3 of the 6 months immediately preceding the month in which such family became ineligible for such aid because of increased hours of, or increased income from employment, shall, while a member of such family is employed, remain eligible for assistance under the plan approved under this subchapter (as though the family was receiving aid under the plan approved under part A of subchapter IV of this chapter) for 4 calendar months beginning with the month in which such family became ineligible for aid under the plan approved under part A of subchapter IV of this

chapter because of income and resources or hours of work limitations contained in such plan.

This case also involves the interpretation of 42 U.S.C. § 1396a(a)(17)(B), which provides in pertinent part:[1]

> (a) A State plan for medical assistance must --
>
> (17) include reasonable standards . . . for determining eligibility for and the extent of medical assistance under the plan which . . . (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, except for income and resources, be eligible for aid or assistance in

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1. The full text of 42 U.S.C. § 1396a(a)(17) is set out in Appendix D.

the form of money payments under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, or to have paid with respect to him supplemental security income benefits under subchapter XVI of this chapter) as would not be disregarded (or set aside for future needs) in determining his eligibility for such aid, assistance, or benefits. . . .

STATEMENT OF THE CASE

This case involves statutory interpretation in the context of the interplay between two government benefit programs, viz., the Aid to Families with Dependent Children (AFDC) program, 42 U.S.C. §§ 601 et seq., and the Medicaid program, 42 U.S.C. §§ 1396 et seq. The Medicaid program is an adjunct to other federally funded programs such as AFDC and Supplemental Security Income (SSI), 42 U.S.C. §§ 1381 et seq., which provide cash payments for dependent children (AFDC) and aged, blind, or disabled individuals (SSI) whose income falls below financial guidelines. Medicaid provides needed medical services for those receiving AFDC or SSI and, at state option, for individuals slightly over the

AFDC or SSI income limitations.

Since the Medicaid program is an adjunct to other cash benefit programs, it does not contain its own system for determining financial eligibility. Instead, it borrows the income disregards and deductions from the related cash benefit program. Thus, the financial standards for families with dependent children are based on the system of income disregards and deductions in the AFDC program.

The Medicaid program defines income as available income which would not be disregarded under the related cash benefit program. 42 U.S.C. § 1396a(a)(17)(B). Such income remaining after the application of the relevant disregards is generally termed "countable income."

In 1972, Congress enacted a new provision in the Medicaid program now codified at 42 U.S.C. § 1396a(e)(1). That section provides that families who lose eligibility for AFDC cash payments because of increased income from employment will receive four additional months of Medicaid after AFDC payments cease. Congress viewed the dual loss of AFDC and Medicaid as both an extreme hardship and a substantial work disincentive. Therefore, § 1396a(e)(1) was enacted to mitigate the harsh effect of that dual loss and also thereby to encourage people to keep working.

The issue before this Court is the proper interpretation of § 1396a(e)(1). Petitioners believe that § 1396a(e)(1)

applies to families who lose AFDC eligibility because of increases in countable income, regardless of whether their gross earnings increased. Since countable income depends on the disregards and deductions from the related cash payment program, countable income increases when those disregards and deductions are changed as well as when gross earnings increase. In both situations, the dual loss of AFDC and Medicaid and the resultant work disincentive effect are the same.

When Congress enacted the Omnibus Budget Reconciliation Act (OBRA), Pub.L. 97-35, 95 Stat. 843 (August 13, 1981), it significantly limited the income disregard provisions of the AFDC program. Thousands of households in Maine lost

their AFDC benefits because of those changes: their countable income increased because OBRA changed the amounts included in countable income. Respondent did not provide four additional months of Medicaid because he read § 1396a(e)(1) to apply only in situations where a family's gross earnings increase.

Prior to January 1982, Petitioners Pamela D. Jones and Jennifer L. Dodge were both single parents who were working. With the application of the pre-OBRA income disregards and deductions, the countable income of each Petitioner was below the AFDC standards. Each Petitioner thus received an AFDC grant and Medicaid coverage.

When OBRA went into effect in Maine in January 1982, the AFDC income disre-

gards and deductions were significantly reduced. As a result, the countable income of both Petitioners increased to the point that they were no longer eligible for AFDC benefits. Their gross earnings from employment did not change. The increases in countable income were solely a result of the OBRA changes. Respondent therefore terminated their AFDC grants and proposed to terminate their Medicaid coverage at the same time.

Petitioners filed administrative appeals challenging the termination of their Medicaid coverage. The sole issue raised within the administrative process was whether 42 U.S.C. § 1396a(e)(1) required Respondent to provide four additional months of Medicaid for Petitioners because they lost their AFDC grants due

to increases in their countable income. Both administrative appeals were denied.

On June 25, 1982, Petitioners filed their Complaint in the Kennebec County Superior Court.2/ The Complaint was based on both the Maine Administrative Procedures Act, 5 M.R.S.A. §§ 11001 et seq., and on 42 U.S.C. § 1983. Petitioners specifically alleged on behalf of themselves and all persons similarly situated that 42 U.S.C. § 1396a(e)(1) required Respondent to provide four additional months of Mediaid coverage to individuals like Petitioners whose AFDC grants are terminated because of increases in countable income. See

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2. A copy of Petitioners' Complaint is set out in Appendix C.

First Claim for Relief, Complaint ¶ 47.

Petitioners moved for Summary Judgment on their § 1983 claims on September 20, 1982. The Superior Court certified a class on November 23, 1982. By decision dated June 8, 1983, the Superior Court entered judgment for Respondent, finding as follows:

> Although Plaintiffs ably argue that the purposes of the medicaid and AFDC statutes would be better served by this Court sustaining the appeal and allowing an additional four months of medicaid benefits, a plain reading of the statute, unambiguous on its face, compels this Court to conclude that the words "increased income from employment" as set out in Section 1396a(e)(1) mean an increase in gross income earned from employment, and cannot be interpreted to mean income from employment countable in determining AFDC eligibility. Slip op. at 3.[3]

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3. The decision of the Superior Court is set out in Appendix B.

Petitioners filed a timely appeal, raising precisely the same issues in the Maine Supreme Judicial Court as they seek to raise in this Court. The Maine Supreme Judicial Court affirmed, finding as follows:

> The word "income" in the phrase "income from employment," without a qualifying adjective, should be accorded its ordinary meaning [citations omitted], i.e., money in exchange for services, or wages . . . . Its unadorned use, when coupled with the phrase "from employment," clearly denotes a reference to the recipient's wages without regard to other elements of the eligibility criteria. 473 A.2d at 881-882.

Petitioners believe the interpretation of 42 U.S.C. § 1396a(e)(1) by the Maine Supreme Judicial Court is erroneous because it conflicts with 42 U.S.C. § 1396a(a)(17)(B) and with congressional

intent. They seek review of that interpretation by this Court.

REASONS FOR GRANTING THE WRIT

This Court has indicated that it will consider granting a writ of certiorari "[w]hen a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals." U.S. Sup. Ct. Rule 17.1(b). The decision of the Maine Supreme Judicial Court interpreting 42 U.S.C. § 1396a(e)(1) in this matter is directly contrary to the interpretation of that statute by the Eighth Circuit in Phillips v. Noot, 728 F.2d 1175 (8th Cir. 1984).

The Eighth Circuit recognized that

"the meaning of 'income' may not be crystal clear from the language of the statute, its context, or its legislative history." 728 F.2d at 1178. Nonetheless, it concluded as follows:

> Even though that Congress may not have envisioned the precise situation which exists here and now, we find the legislative history to tip the balance in favor of plaintiffs' position. We therefore conclude that the term "income" in § 1396a(e)(1) means "countable" income. 728 F.2d at 1178.

In enacting the mandatory elements of state Medicaid plans, Congress sought to ensure a basic core of medical coverage that was uniform from state to state. Section 1396a(e)(1) is one of those mandatory elements. The conflict between the decisions of the Eighth Circuit and the Maine Supreme Judicial

Court makes such uniform coverage impossible. If Petitioners and the class they represent resided in Minnesota or presumably elsewhere in the Eighth Circuit, they would be entitled to four additional months of medicaid because their AFDC terminations were due to increased countable income. Instead, by the decision challenged herein, they receive nothing.

The interpretation of § 1396a(e)(1) continues to be important. As federal budget deficits loom large, there will be pressure to tighten the standards for entitlement programs like AFDC even further. Every time AFDC income disregards are further limited, those individuals terminated from AFDC who are fortunate enough to reside in the Eighth

Circuit will benefit from Phillips v. Noot and receive four additional months of Medicaid coverage while those who live in Maine will not receive that benefit because of the decision challenged herein. Issuance of a Writ of Certiorari herein will ensure uniformity among the states in the availability of the needed medical care Medicaid provides.

For the foregoing reasons, a Writ of Certiorari should issue.

Respectfully submitted,

/s/
ROBERT EDMOND MITTEL

DATED: JUL - 2 1984

AFFIDAVIT OF SERVICE

I, James R. Crotteau, being duly sworn, depose and say that three true and correct copies of the foregoing Petition for Writ of Certiorari were mailed by depositing them in a United States mailbox with first-class postage prepaid, this 29th day of June 1984 to the following counsel of record for Respondent:

Katherine Greason
Assistant Attorney General
Department of Human Services
State House Station 11
221 State Street
Augusta, ME 04333

James R. Crotteau
JAMES R. CROTTEAU

Subscribed and sworn to before me this 29th day of June 1984.

Diane C. Ross
Notary Public

DIANE C. ROSS
NOTARY PUBLIC, STATE OF MAINE
MY COMMISSION EXPIRES 3/30/91

APPENDIX A

PAMELA D. JONES

and

JENNIFER L. DODGE

v.

MICHAEL PETIT

Argued November 21, 1983
Decided April 5, 1984

Before McKUSICK, C.J., NICHOLS, ROBERTS, VIOLETTE, GLASSMAN, and SCOLNICK, JJ., and DUFRESNE, A.R.J.

ROBERTS, J.

Pamela Jones and Jennifer Dodge appeal from a decision of the Superior Court, Kennebec County, upholding the denial of post-termination Medicaid benefits following termination of their eligibility for Aid to Families with Dependent Children (AFDC). Such Medicaid

benefits are normally awarded for up to four months when AFDC is terminated due to increased income. Plaintiffs became ineligible for AFDC because of a statutory reformulation of eligibility criteria. On appeal they argue that the Superior Court erred in its conclusion that the reformulation does not constitute "increased income" within the meaning of the Medicaid statute. We affirm the judgment.

I.

The plaintiffs in this case are both single working mothers with at least one dependent child. Prior to enactment by Congress of the Omnibus Budget Reconciliation Act of 1981 (OBRA), each had been the recipient of AFDC and Medical Assistance Program (Medicaid)

payments under the eligibility criteria then in place. OBRA's reformulation of eligibility criteria resulted in the denial of further AFDC payments to Jones and Dodge and a refusal to grant them any post-termination Medicaid. Jones and Dodge appealed the termination of Medicaid benefits to the Maine Department of Human Services. Following individual fair hearings, the department ruled that neither Jones nor Dodge were eligible for post-termination Medicaid because the termination of AFDC benefits was not the result of an increase in their income. Instead, the department ruled, termination occurred when the same income was subjected to new federal guidelines, and the Medicaid statute does not contemplate awarding post-termination

Medicaid under these particular circumstances.

Jones and Dodge then instituted a class action in the Superior Court pursuant to 5 M.R.S.A. § 11001, 42 U.S.C. § 1983, and M.R. Civ. P. 23 & 80B, seeking declaratory and injunctive relief and attorney's fees.[1] The suit named Michael Petit, in his capacity as Commissioner of the Maine Department of Human Services, as defendant. The plaintiffs argued that the term "increased income," as used in the Medicaid statute, referred to "countable income," i.e., that portion of gross income which

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1. Standing of the named plaintiffs to bring this action on behalf of all similarly situated AFDC and Medicaid recipients in the State of Maine has not been challenged on appeal.

remains following various deductions and "disregards" taken in the course of determining eligibility. The court, however, citing Concord General Mutual Ins. Co. v. Patrons-Oxford Mutual Ins. Co., 411 A.2d 1017 (Me. 1980), ruled that "a plain reading of the statute, unambiguous on its face," must govern its interpretation, and concluded that the term "increased income" referred to a recipient's gross income.

II.

Aid to Families with Dependent Children, now codified at 42 U.S.C. §§ 601-15, was enacted as part of the Social Security Act of 1935. By statute, 22 M.R.S.A. §§ 3741-58, the State of Maine elected to participate in this program, which is administered by the Department

of Human Services. The Medical Assistance Program, now codified at 42 U.S.C. §§ 1396-96p, was appended to the Social Security Act in 1965, and is administered by the Maine Department of Human Services pursuant to 22 M.R.S.A. § 3173. Eligibility for AFDC results in automatic Medicaid eligibility, see 42 U.S.C. § 1396a(a)(10)(A)(i). Under the previous formula for determining AFDC eligibility, a prospective recipient's gross income was reduced by various deductions and disregards to reach countable income. The countable income was then compared to a state payment standard and, if it fell below that standard, the claimant would be entitled to benefits.[2/] Under OBRA, a

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2. 42 U.S.C. § 602(a)(7)-(8) (Supp. 1980).

claimant's gross income is first set against a standard of need established for a family of the claimant's size, as a threshold test. If the income exceeds 150% of that standard, then AFDC eligibility is denied without any further inquiry as to the claimant's countable income.3/

Both plaintiffs in this case qualified for AFDC benefits under the previous formula, but failed to meet the threshold test established by OBRA. Under 42 U.S.C. § 1396a(e)(1), a recipient whose AFDC benefits are terminated due to "increased hours of, or increased income from, employment," remains eligible for up to four additional months of

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3. 42 U.S.C. § 602(a)(18) (Supp. 1981).

Medicaid payments, provided certain other criteria are met.[4] Both Jones and Dodge met the latter criteria,[5] but the

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4. The intent behind enactment of this provision was to reduce the disincentive to work created by the so-called "Medicaid notch." According to a Senate Report, "a person might not want to seek greater earnings since additional earnings would make him ineligible for Medicaid with the result that he would lose medical benefits worth many times more than the dollar of marginal income which moved him off the cash assistance rolls. This so called Medicaid notch is both inequitable and a disincentive to work." S. Rep. No. 1230, 92d Cong., 2d Sess. 220 (1972). The availability of up to four months of post-termination Medicaid was meant to cushion the blow resulting from a loss of AFDC eligibility. Id. at 221.

5. A recipient family must have been receiving AFDC benefits in at least three of the six months immediately preceding the month in which ineligibility occurs, and at least one member of the family must remain employed during the period that post-termination Medicaid is received. 42 U.S.C. § 1396a(e)(1) (Supp. 1981).

question of their eligibility for post-termination Medicaid hinges upon whether the termination of their AFDC benefits can reasonably be imputed to "increased income from . . . employment." We conclude, with the department and the court below, that such an interpretation of plaintiffs' circumstances strains the meaning of the statutory subsection.

Although the legislative intent behind section 1396a(e)(1) seems to disfavor the plaintiffs' position, see supra note 4, we need not look behind the statutory language to its legislative history when the statutory language is plain and unambiguous on its face. Terry v. St. Regis Paper Co., 459 A.2d 1106, 1109 (Me. 1983); Concord General Mutual Ins. Co., 411 A.2d at 1020. The word

"income" in the phrase "income from employment," without a qualifying adjective, should be accorded its ordinary meaning, see generally Franklin Property Trust v. Foresite, Inc., 438 A.2d 218, 222 (Me. 1981); State v. Snow, 383 A.2d 1385, 1388 (Me. 1978), i.e., money in exchange for services, or wages. Plaintiffs urge that the use of the term "countable income" in other parts of the statute implies that the word "income" in section 1396a(e)(1) must mean "countable income," in order for the statute to be internally consistent. Legislative use of such a modifier in other contexts, however, is not persuasive as to the meaning of "income" in the present context. Its unadorned use, when coupled with the phrase "from employment," clearly denotes a reference to the

recipient's wages without regard to other elements of the eligibility criteria.

The plaintiffs' loss of eligibility for AFDC payments did not result from any real increase in income, but from a reformulation under OBRA of the eligibility standard. Section 1396a(e)(1), while ameliorative, was never meant to redress all instances where AFDC benefits are cut off. We would have to disregard the statutory language to hold that an administrative change in eligibility criteria is equivalent to an increase in income from employment.

The entry is:

Judgment affirmed.

All concurring.

APPENDIX B

STATE OF MAINE Kennebec, ss.	SUPERIOR COURT Civil Action Docket No. CV-82-314
PAMELA JONES, et al. Plaintiffs v. MICHAEL PETIT Defendant	ORDER ON APPEALS AND ON MOTION FOR SUMMARY JUDGMENT

Plaintiffs Pamela Jones and Jennifer Dodge are before this Court under 5 M.R.S.A. Sections 11001, 11008 and Rule 80C M.R.Civ.P. on appeal from Decisions by the Maine Department of Human Services terminating their medicaid benefits. Subsequent to the filing of the Complaint, Plaintiffs have moved successfully to have the action certified as

a Plaintiff class action. Plaintiffs also have moved for summary judgment on their claim under 42 U.S.C. Section 1983.

The case turns on the interpretation of language contained in Section 1396a(e)(1) of 42 U.S.C.[1/] That section

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1. 42 U.S.C. Section 1396a(e)(1):

> Notwithstanding any other provision of this subchapter, effective January 1, 1974, each State plan approved under this subchapter must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of subchapter IV of this chapter [AFDC] in at least 3 of the 6 months immediately preceding the month in which such family became ineligible for such aid because of increased hours of, or increased income from employment, shall, while a member of such family is employed, remain eligible for assistance under the plan approved under this subchapter (as though the family was receiving aid under the plan

provides that certain AFDC recipients who lose AFDC eligibility "because of increased hours of, or increased income from, employment . . ." remain eligible for medicaid benefits[2] for an additional four months. Plaintiffs Jones and Dodge, and apparently other members of the class, were employed persons receiving Aid to Families with Dependent Children (AFDC) benefits.[3] In 1981, through amendments to federal law governing AFDC,

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approved under part A of subchapter IV of this chapter) for 4 calendar months beginning with the month in which such family became ineligible for aid under the plan approved under part A of subchapter IV of this chapter because of income and resources or hours of work limitations contained in such plan.

2. 22 M.R.S.A. Section 3173.

3. 22 M.R.S.A. Sections 3741, 3751-1758.

Congress made substantial changes in AFDC eligibility by changing the methods by which income was calculated and increasing the amount of income to be counted in determining eligibility. As a result of the changes Congress made in countable income, Plaintiffs Jones and Dodge became ineligible for AFDC benefits. After hearing before the Department of Human Services, they were likewise found to be ineligible for the additional four months of medicaid coverage, for the reason that the AFDC ineligibility was due to a change in countable income, and was not attributable to increased hours of employment or increased income from employment, as required by 42 U.S.C. Section 1396a(e)(1). This appeal followed.

Although Plaintiffs ably argue that the purposes of the medicaid and AFDC statutes would be better served by this Court sustaining the appeal and allowing an additional four months of medicaid benefits, a plain reading of the statute, unambiguous on its face, compels this Court to conclude that the words "increased income from employment" as set out in Section 1396a(e)(1) mean an increase in gross income earned from employment, and cannot be interpreted to mean income from employment countable in determining AFDC eligibility. Concord General Mutual Ins. Co. v. Patrons-Oxford Mutual Ins. Co., 411 A.2d 1017 (Me. 1980). This statutory reading is not inconsistent with Plaintiffs' assertions that one of the main purposes of Section 1396a(e)(1) is to reduce disincentive to

work or to increase earnings among medicaid recipients, to avoid situations where a small increase in earnings could lead to a loss of medicaid, worth considerably more than the increase of income. Here, the loss of AFDC did not result from Plaintiffs receiving higher income at work, but rather from changed methods of computation of income. The disincentive factor is not involved in this situation.

The interpretation of Section 1396a(e)(1) urged upon this Court by Plaintiffs could have been made mandatory by a congressionally enacted statutory amendment. Absent such an amendment, this Court must find in favor of Defendant.

It is Ordered that Motion of Plaintiffs for Summary Judgment is denied.

Appeal of Plaintiffs denied.

The Decisions of the Department of Human Services are affirmed.

Dated: June 8, 1983

/s/ ROBERT W. CLIFFORD
Robert W. Clifford
Justice, Superior Court

APPENDIX C

STATE OF MAINE	SUPERIOR COURT CIVIL ACTION
KENNEBEC, SS.	DOCKET NO. CV-82-314

PAMELA D. JONES of Lewiston, in the County of Androscoggin, State of Maine,

and

JENNIFER L. DODGE of Westbrook, in the County of Cumberland, State of Maine, on behalf of themselves and all others similarly situated,

Plaintiffs,

-vs-

COMPLAINT

MICHAEL PETIT in his capacity as Commissioner of the Maine Department of Human Services whose principal

office is located)
in Augusta in the)
County of Kennebec,)
State of Maine,)
)
Defendant.)

Plaintiffs Pamela D. Jones and Jennifer L. Dodge, by and through their undersigned attorney, complain and allege as follows:

INTRODUCTION

1) This action is brought pursuant to 42 U.S.C. § 1983 on behalf of named plaintiffs and the class they represent to challenge defendant's failure to provide an additional four months of Medical Assistance to families whose grants under the Aid to Families with Dependent Children (AFDC) program were terminated because of an increase in countable

income. Named plaintiffs also bring this action pursuant to 5 M.R.S.A. § 11001 and Rule 80B of the Maine Rules of Civil Procedure to review the final agency action of defendant denying their requests for four additional months of Medical Assistance.

JURISDICTION AND VENUE

2) This Court has jurisdiction over this action by virtue of 4 M.R.S.A. § 105, 14 M.R.S.A. § 6051, and 5 M.R.S.A. § 11001.

3) Declaratory relief may be granted by virtue of 14 M.R.S.A. § 5953.

4) Venue is appropriate by virtue of 5 M.R.S.A. § 11002.

PARTIES

5) Plaintiff Pamela D. Jones resides in Lewiston, Maine with her two children. She is a single working parent earning $371.00 every two weeks. She received an AFDC grant and Medical Assistance from the State of Maine until February 1982.

6) Plaintiff Jennifer L. Dodge resides is Westbrook, Maine with her one child. She is a single working parent presently earning approximately $160.00 per week. She received an AFDC grant and Medical Assistance from the State of Maine until March 1982.

7) Defendant Michael Petit is the Commissioner of the Maine Department of Human Services (DHS). As Commissioner of

DHS, he is responsible for implementing and administering the AFDC and Medical Assistance programs for the State of Maine. He is being sued only in his official capacity. At all times relevant to this case, defendant was acting under color of state law.

CLASS ALLEGATIONS

8) Plaintiffs bring this action on their own behalf and on behalf of a class as defined herein pursuant to Rule 23(a) and (b)(2) of the Maine Rules of Civil Procedure. The class consists of all families within the State of Maine who have lost or will lose their AFDC grants because their countable income from employment increased by operation of the income limitation rules enacted by Pub.L. No. 97-35, 95 Stat. 843-845 (August 13,

1981) and who otherwise meet the requirements of 42 U.S.C. § 1396a(e)(1) for continuation of Medical Assistance for four months after the month of AFDC termination.

9) The class is so numerous that joinder of all members is impracticable.

10) There are questions of law or fact common to the class.

11) The claims of the representative parties are typical of the claims of the class.

12) The representative parties will fairly and adequately protect the interests of the class.

13) Defendant has acted and refused to act on grounds generally

applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

STATEMENT OF FACTS

14) AFDC and Medical Assistance are cooperative federal-state programs. The State of Maine participates in both programs and, as a condition of continued receipt of federal funds, must operate them in conformity with federal requirements.

15) The requirements of the AFDC program are set out in Title IV-A of the Social Security Act, 42 U.S.C. §§ 601 et seq. DHS is the state agency designated by the state legislature to administer the AFDC program, 22 M.R.S.A. §§ 3741 et

seq.

16) The requirements of the Medical Assistance program are contained in Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq. DHS also administers the Maine Medical Assistance program, 22 M.R.S.A. § 3173.

17) State regulations for both programs are set forth in the Maine Public Assistance Payments Manual (MPAPM).

18) To be eligible for cash payments under the AFDC program, a family must contain at least one child under eighteen years of age (or in certain instances under nineteen) who is living in the home of a specified relative and who has been deprived of parental support

or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent. 42 U.S.C. § 606(e), MPAPM Chap. II, Sec. A.

19) In addition, the countable income of such families, that is, their gross income less applicable income disregards and deductions, must be less than the standard of need set out in MPAPM Chap. II, Sec. D.

20) Those families actually receiving AFDC cash payments are automatically eligible for Medical Assistance. 42 U.S.C. § 1396a(a)(10)(A), MPAPM Chap. IV, Sec. A, Pg. 2.

21) Loss of AFDC because of increased income from employment does not lead to an immediate termination of

Medical Assistance. To ease the hardship of losing both benefits at the same time, Congress enacted a provision which provides four additional months of eligibility for Medical Assistance to families whose income from employment has grown to the point where they lose their AFDC cash payments, provided that they received AFDC in at least three of the six months prior to the month of ineligibility and that at least one member of the family is employed during the extended four month period of eligibility. 42 U.S.C. § 1396a(e)(1).

22) The State of Maine has adopted a regulation containing that provision of federal law. MPAPM Chap IV, Sec A, Pg. 3.

23) Prior to February 1982, plaintiff Jones received an AFDC grant and

automatic Medical Assistance coverage.

24) Plaintiff Jones's AFDC grant for the period beginning December 1981 was $183.00. It was calculated as follows:

$803.86	monthly gross income
-30.00	less the first $30 of earned income
$773.86	
-257.95	less 1/3 of the remaining earned income
$515.91	
-398.27	less work related expenses (see below)
$117.64	countable income
$301.00	AFDC payment level (household of 3, 1 adult)
-118.00	less countable income (rounded to nearest dollar)
$183.00	amount of AFDC grant

See 42 U.S.C. § 602(a)(7) and (8) (Supp. 1980).

25) Prior to March 1982, plaintiff Dodge received an AFDC grant and automa-

tic Medical Assistance coverage.

26) Effective December 1981, plaintiff Dodge received an AFDC grant of $149.00. It was calculated as follows:

$580.62	monthly gross income
-30.00	less the first $30 of earned income
$550.62	
-183.54	less 1/3 of the remaining earned income
$367.08	
-292.95	less work related expenses (see below)
$ 74.13	countable income
$223.00	AFDC payment level (household of 2, 1 adult)
-74.00	less countable income (rounded to nearest dollar)
$149.00	amount of AFDC grant

See 42 U.S.C. § 602(a)(7) and (8) (Supp. 1980).

27) For both plaintiffs, work related expenses included all taxes withheld, the total child care expenses, tra-

vel to and from work, lunches, and all similar items.

28) On August 13, 1981, Congress enacted Title XXIII of the Omnibus Budget Reconciliation Act (OBRA), Pub.L. No. 97-35, 95 Stat. 843. OBRA made a number of changes in the manner in which countable income is calculated to determine eligibility for AFDC.

29) Families whose gross income exceeds 150% of the standard of need for the relevant family size became ineligible to receive AFDC. 42 U.S.C. § 602(a)(18)(Supp. 1981).

30) In Maine, the OBRA-inspired changes became effective February 1, 1982.

31) Effective February 1982,

plaintiff Jones's countable income, that is, the income level used to determine her AFDC eligibility, increased from $117.64 (see Paragraph 24) to $803.86, the full amount of her gross income (see Paragraph 29).

32) Because plaintiff Jones's countable income was greater than 150% of the standard of need for the size of her family, her AFDC grant was terminated effective February 1982.

33) Plaintiff Jones received a notice that her Medical Assistance would be terminated at the end of February 1982.

34) Plaintiff Jones filed a timely appeal of the termination of her Medical Assistance.

35) A hearing was held on May 18, 1982 before William F. Vassar, a duly appointed hearing officer for DHS.

36) By decision dated June 1, 1982, the hearing officer determined that DHS acted correctly in terminating plaintiff Jones's AFDC and Medical Assistance. He refused to order an additional four months of Medical Assistance for her. A copy of the decision is attached hereto as Exhibit 1 and incorporated herein by reference.

37) The decision of the hearing officer represents final agency action.

38) Effective February 1982, plaintiff Dodge's countable income, that is, the income level used to determine her AFDC eligibility, increased from

$74.13 (see Paragraph 26) to $580.62, the full amount of her gross income (see Paragraph 29).

39) Because plaintiff Dodge's countable income was greater than 150% of the standard of need for the size of her family, her AFDC grant was terminated effective March 1982.

40) Plaintiff Dodge received a notice that her Medical Assistance would be terminated at the end of March 1982.

41) Plaintiff Dodge filed a timely appeal of the termination of her Medical Assistance.

42) A hearing was held on June 1, 1982 before William Rosenbaum, a duly appointed hearing officer for DHS.

43) By decision dated June 14, 1982, the hearing officer determined that DHS acted correctly in terminating plaintiff Dodge's AFDC and Medical Assistance. He refused to order an additional four months of Medical Assistance for her. A copy of the decision is attached hereto as Exhibit 2 and incorporated herein by reference.

44) The decision of the hearing officer represents final agency action.

45) Plaintiffs and the class they represent have no adequate remedy at law to secure their rights under federal and state law.

46) Plaintiffs and the class they represent have suffered and will continue to suffer irreparable injury unless

defendant's unlawful conduct is enjoined.

FIRST CLAIM FOR RELIEF

47) Defendant has violated 42 U.S.C. § 1396a(e)(1) and its implementing regulation, 42 C.F.R. § 435.112, by denying four additional months of Medical Assistance to plaintiffs and the class they represent who became ineligible for AFDC following an increase in countable income from employment due to enactment of OBRA even though the families received AFDC for three of the six months immediately preceding the month of ineligibility and a member of the families remains employed during the four month period.

SECOND CLAIM FOR RELIEF

48) Defendant has violated MPAPM, Chap. IV, Sec. A, Pg. 3 by denying four

additional months of Medical Assistance to plaintiffs and the class they represent who became ineligible for AFDC following an increase in countable income from employment due to enactment of OBRA even though the families received AFDC for three of the six months immediately preceding the month of ineligibility and a member of the families remains employed during the four month period.

THIRD CLAIM FOR RELIEF

49) Defendant's final decision to deny an additional four months of Medical Assistance to plaintiff Jones after she became ineligible for AFDC in the circumstances of this case was in violation of statutory provisions, affected by error of law, and was arbitrary and capricious and characterized by abuse of

discretion.

FOURTH CLAIM FOR RELIEF

50) Defendant's final decision to deny an additional four months of Medical Assistance to plaintiff Dodge after she became ineligible for AFDC in the circumstances of this case was in violation of statutory provisions, affected by error of law, and was arbitrary and capricious and characterized by abuse of discretion.

WHEREFORE, plaintiffs as that this Honourable Court:

1. Certify this action as a class action pursuant to Rule 23 of the Maine Rules of Civil Procedure;

2. Declare that AFDC families who

become ineligible for AFDC due to an increase in countable income from employment are entitled to Medical Assistance for four months after the date their AFDC is terminated, no matter what the cause of the increase in countable income might be, so long as the family received AFDC in three of the six months preceding the month of termination and so long as a member of the family remains employed throughout the four month period;

3. Enter preliminary and permanent injunctions restraining defendant or his successor in office and his agents, employees, and all persons acting under his control from failing to provide four additional months of Medical Assistance to any family after the date its AFDC is

terminated as a result of the income limitation rules enacted by OBRA, Pub.L. 97-35, 95 Stat. 843, so long as the family received AFDC in at least three of the six months prior to the month of termination and so long as a member of the family is employed throughout the four month period;

4. Enter preliminary and permanent injunctions ordering defendant or his successor in office and his agents, employees, and all persons acting under his control to:

a. notify members of plaintiff class that any notices purporting to terminate their Medical Assistance simultaneously with AFDC termination are null and void and that they are entitled to Medical

Assistance for four months after the month af AFDC termination;

b. send members of plaintiff class a series of Medical Assistance cards which will enable them to receive four additional months of Medical Assistance;

5. Reverse the decision denying plaintiff Jones four additional months of Medical Assistance and order defendant to send her Medical Assistance cards which will entitle her to receive four additonal months of Medical Assistance;

6. Reverse the decision denying plaintiff Dodge four additional months of Medical Assistance and order defendant to send her Medical Assistance cards which will entitle her to receive four addi-

tional months of Medical Assistance;

7. Grant plaintiffs their costs and reasonable attorneys fees; and

8. Grant such additional or alternative relief as the Court may deem just, proper, and equitable.

Dated: June 23, 1982

/s/ James R. Crotteau
JAMES R. CROTTEAU
277 Lisbon Street
Lewiston, ME 04240
Telephone: (207) 784-1558

ATTORNEY FOR PLAINTIFFS

[Exhibits not reproduced]

APPENDIX D

42 U.S.C. § 1396a(a)(17)

§ 1396a. State plans for medical assistance -- Contents

(a) A State plan for medical assistance must --

. . .

(17) include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this

subchapter, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, except for income and resources, be eligible for aid or assistance in the form of money payments under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, or to have paid with respect to him supplemental security income benefits under subchapter XVI of this chapter) as would not be disregarded (or set aside for future needs) in determining his eligibility for such aid, assistance, or benefits, (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), is blind or permanently and

totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program); and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums or otherwise) incurred for medical care or for any other type of remedial care recognized under State law.

Office - Supreme Court, U.S.
FILED
OCT 6 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-2165

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

PAMELA D. JONES AND JENNIFER L. DODGE,
individually and on behalf of all
other persons similarly situated,
PETITIONERS,

vs.

MICHAEL PETIT, COMMISSIONER
Maine Department of Human Services
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION

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STATEMENT OF THE CASE

This case was filed in the Superior Court of Kennebec County in Maine on behalf of a class of Maine aid to families with dependent children (AFDC) recipients who became ineligible for cash benefits following implementation in January, 1982 of federal AFDC program changes required by the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, 95 Stat. 357 (hereinafter "OBRA"). Among the OBRA changes were the addition of a gross income test for eligibility and a reduction in the proportion of earned income that could be disregarded in determining whether applicants or recipients met AFDC financial eligibility guidelines. The petitioners became ineligible for AFDC because of increases in their "countable income"[1] resulting from their inability to meet the gross income test.[2] Having lost their AFDC eligibility, the petitioners also lost the automatic medicaid coverage

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[1]Although the phrase countable income is not defined in AFDC statutes or regulations, it is a term used by program administrators and participants to describe family income remaining after all appropriate disregards have been applied.

[2]The Maine Supreme Judicial Court, in the case that the petitioners seek to have reviewed, describes the effect of OBRA on AFDC eligibility and the named plaintiffs:

> Under the previous formula for determining AFDC eligibility, a prospective recipient's gross income was reduced by various deductions and disregards to reach countable income. The countable income was then

that accompanies AFDC. They contend that their loss of AFDC because of increased countable income was a loss "because of increased hours of, or increased income from, employment," as described in 42 U.S.C. §1396a(e)(1). They therefore contend that they were entitled to automatic medicaid coverage under that statute for four months after they became ineligible for AFDC. The respondent Maine Department of Human Services ("Department") argued successfully before the Supreme Judicial Court of Maine in *Jones v. Petit*, 473 A.2d 879 (Me. 1984), that that section applies only to those who lose AFDC eligibility because their actual income rather than their countable income has increased, and that the class therefore was not eligible for the additional medicaid coverage. The parties' divergent views stem from a disagreement about statutory construction.

> compared to a state payment standard and, if it fell below that standard, the claimant would be entitled to benefits. Under OBRA, a claimant's gross income is first set against a standard of need established for a family of the claimant's size, as a threshold test. If the income exceeds 150% of that standard, then AFDC eligibility is denied without any further inquiry as to the claimant's countable income.
>
> Both plaintiffs in this case qualified for AFDC benefits under the previous formula, but failed to meet the threshold test established by OBRA. [footnotes omitted.]

Jones v. Petit, 473 A.2d 879, 881 (Me. 1984).

REASONS FOR DENYING THE WRIT

1. There are no special and important reasons for granting a writ of certiorari in this case.

The petitioners argue that this Court should exercise its jurisdiction to hear this case because of a conflict between an Eighth Circuit decision, *Phillips v. Noot*, 728 F.2d 1175 (8th Cir. 1984), holding that people who lost AFDC because of OBRA changes were entitled to four additional months of medicaid coverage, and the decision in *Jones v. Petit*, 473 A.2d 879 (Me. 1984), holding that they were not. This Court has said that it may grant a review on writ of certiorari when there is such a conflict, but only when there are also "special and important reasons" calling for a review. Sup. Ct. R. 17. "'Special and important reasons' imply a reach to a problem beyond the academic or episodic." *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74 (1955). This petition raises an episodic problem because the resolution of the statutory interpretation question that is presented here will only affect the historical class of people who were receiving AFDC in 1982 and whose eligibility was affected by OBRA. Therefore, the respondent urges this court not to exercise its discretion to hear this case under Rule 17.

The petitioners suggest that the problem raised by OBRA is not episodic because, with an increasing federal deficit, Congress may further restrict eligibility for AFDC in the future. They suggest that the further restrictions will again give rise to the question of entitlement to four additional months of medicaid coverage. In fact, however, recent federal legislation known as the Deficit Reduction

Act of 1984, P.L. 98-369, 98 Stat. 494 (hereinafter "DEFRA"), which changes among other things treatment of AFDC disregards, shows that the problem of statutory construction posed here derives from an episode that is unlikely to recur.

Specifically, the AFDC changes in DEFRA show that Congress has recognized the confusion caused by the OBRA change in countable income determinations and has dealt with that confusion by providing a safeguard in subsequent changes to avoid similar problems. In sections 2623 and 2624 of DEFRA, Congress avoided problems with the four month automatic medicaid provision by adjusting extended medicaid coverage in conjunction with a legislative change concerning countable income. Section 2624 expressly provides that certain families who become ineligible for AFDC because of the changes in the "thirty and a third disregard"[3] set out in section 2623 will continue to receive medicaid automatically for at least nine months. This specific nine month extension of medicaid coverage circumvents any problems with the four month extension under 42 U.S.C. §1396a(e)(1) similar to those that OBRA's change in countable income created. Congress' recognition in section 2624 of the difficulties with interpreting 42 U.S.C. §1396a(e)(1) following statutory changes in countable income calcula-

---

[3]The "thirty and a third" disregard reduces countable income by $30 plus one-third of the AFDC applicant or recipient's income after all other disregards have been taken. DEFRA revises the method for determining the duration of both the flat $30 disregard and the one-third disregard.

tions is strong evidence that the issue will not arise in future AFDC reforms.[4] Congress having demonstrated its awareness in 1984 of the medicaid problems created by statutory changes in AFDC income calculations, there is no reason to assume that it will not continue to address those problems in any future legislation that may result from efforts to reduce the federal deficit.

2. Public interest is not a reason for granting a writ of certiorari in this case.

Reasons for granting a writ of certiorari may also include a consideration of the importance of the issues to the public as well as to the parties. *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923). The petitioners argue that the public interest in a uniform medicaid program requires that the conflict between Maine's statutory interpretation and that of the Eighth Circuit in *Phillips v. Noot*, 728 F.2d 1175 (8th Cir. 1984),

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[4]In addition, the Conference Report accompanying DEFRA provides a clear indication of Congress' understanding that 42 U.S.C. §1396a(e)(1) applies only to changes in actual income and not in countable income. The Conference Report's description of the post-OBRA and pre-DEFRA law says that

> [c]ategorical Medicaid eligibility is retained after the loss of AFDC eligibility [by reason of OBRA's four month limit on the thirty and a third disregard] only in the case of families whose earnings increase to the point that they would be ineligible even if the $30 plus one-third disregard were applied. These families are eligible for Medicaid for four additional months.

(footnote 4 continued on next page.)

be resolved. As noted above, however, Congress seems to be aware of conflicting interpretations resulting from OBRA and has taken steps to resolve the problems or to prevent such conflicts from arising again. That awareness indicates that the problem created by OBRA is unlikely to recur and lessens the public's interest in resolving in the courts the issue raised here.

The public interest in the resolution of the case at bar may also be considered through an examination of the interest of the parties. That interest, though not to be minimized, has diminished as the impact of OBRA recedes, because the class affected by this suit includes only those whose AFDC eligibility ended as a result of OBRA changes and not as a result of any subsequent changes that may have affected countable income. The relief available to the class in light of the Eleventh Amendment principles enunciated in *Edelman v. Jordan*, 415 U.S. 651 (1974), and *Quern v. Jordan*, 440 U.S. 332 (1979), appears limited to notice to class members that they may have been eligible for four months of automatic medicaid coverage following closure of their AFDC grants sometime early in 1982. The effectiveness of such a notice is doubtful in light of the unlikelihood that the Department has current addresses for class members or

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(footnote 4 continued from previous page.)

H.R. Rep. No. 861, 98th Cong., 2d Sess. 1393. The Conference Committee's description shows its understanding that the four month automatic extension of medicaid is available only if AFDC ineligibility results from increased earnings rather than from increased countable income.

can reach them through publication, and the unlikelihood that any class members who may be located have kept adequate records of medical expenditures made in the four months after their AFDC eligibility ended to enable the Department to make medical payments. It is also probable that some class members received medicaid coverage after their AFDC eligibility ended through Maine's medically needy medicaid program, which provides medicaid to certain families whose income exceeds AFDC financial eligibility guidelines after those families have incurred medical expenses in an amount proportionate to their income. Thus, the importance of this case is further eroded.

3. This Court should not exercise its discretion to grant certiorari where the petitioners failed to pursue an appropriate state court remedy.

Phillips v. Noot, 728 F.2d 1175 (8th Cir. 1984), was decided on March 12, 1984. The Maine Supreme Judicial Court, sitting as the Law Court, decided the case at bar more than three weeks later on April 5, 1984. It is apparent from the decision in *Jones v. Petit*, 473 A.2d 879 (Me. 1984), that the Law Court was unaware of the earlier Eighth Circuit case at the time of its decision. The result is a conflict between the decision of the Eighth Circuit and the decision of Maine's highest court.

That conflict might have been resolved had the petitioners taken corrective action in front of the Maine Supreme Judicial Court. Maine Rule of Civil Procedure 76A provides that no mandate shall issue until fourteen days after the date of a Law Court decision. Within that

time, a dissatisfied party may file a motion for reconsideration. Under Rule 76A, the court's apparent willingness to accept within fourteen days after decision motions for reconsideration that are not frivolous or repetitive indicates that the petitioners had over five weeks in which to bring the conflicting Eighth Circuit opinion to the court's attention. Having failed to request a timely reconsideration, the petitioners should not now be granted an opportunity to reargue their case before the Supreme Court of the United States.

CONCLUSION

For reasons discussed above, the respondent respectfully requests that the petition for a writ of certiorari be denied.

DATED: October 4, 1984

/s/ Katherine Greason

KATHERINE GREASON
Assistant Attorney General
Attorney for Respondent
Department of Human Services
221 State Street, Station 11
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AFFIDAVIT OF SERVICE

I, Katherine Greason, being duly sworn, depose and say that this document was timely filed and served:

Forty copies were mailed by being deposited at the United States post office in Augusta, Maine with first-class postage prepaid on this 4th day of October, 1984, addressed to Office of the Clerk, Supreme Court of the United States, Washington, D.C. 20543;

Three copies were similarly mailed addressed to Robert E. Mittel, Mittel and Hefferman, 5 Milk Street, P.O. Box 428, Portland, Maine 04112.

Dated: October 4, 1984

/s/ Katherine Greason

KATHERINE GREASON
Assistant Attorney General

Subscribed and sworn to before me this 4th day of October, 1984.

NOTARY PUBLIC

My commission expires:

(3)

No. 83-2165

Office - Supreme Court, U.S.
FILED
FEB 26 1985
ALEXANDER L. STEVAS,
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1984

PAMELA D. JONES AND
JENNIFER L. DODGE, ETC., PETITIONERS

v.

MICHAEL PETIT, COMMISSIONER,
MAINE DEPARTMENT OF HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

REX E. LEE
Solicitor General

RICHARD K. WILLARD
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18pp

QUESTION PRESENTED

Whether petitioners were entitled to receive four additional months of Medicaid coverage pursuant to 42 U.S.C. 1396a(e)(1) after their Aid to Families with Dependent Children benefits were terminated as a result of statutory changes in the AFDC eligibility criteria under the Omnibus Budget Reconciliation Act of 1981.

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In the Supreme Court of the United States

OCTOBER TERM, 1984

No. 83-2165

PAMELA D. JONES AND
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v.

MICHAEL PETIT, COMMISSIONER,
MAINE DEPARTMENT OF HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

1. Petitioners are former recipients of Aid To Families With Dependent Children (AFDC) benefits. AFDC is a joint federal/state program that was created in 1935 to provide assistance to needy families with dependent children. Social Security Act, ch. 531, Tit. IV, 49 Stat. 627-629. Under the AFDC program, the federal government reimburses states for a percentage of their expenditures for aid to such families, 42 U.S.C. 603, 1318; in return, the states agree to administer their programs in accordance with state plans that meet federal statutory and regulatory requirements, 42 U.S.C. 602. States that participate in the

Medicaid program must make Medicaid benefits available to AFDC recipients. See 42 U.S.C. 1396a(a)(10)(A)(i).

Until 1981, eligibility for AFDC benefits was determined by subtracting various deductions and "disregards" from the family's income and comparing the amount remaining with a state standard of need. See *Shea* v. *Vialpando,* 416 U.S. 251 (1974); *Rosado* v. *Wyman,* 397 U.S. 397 (1970). Section 402(a)(7) of the Social Security Act, 42 U.S.C. (1976 ed.) 602(a)(7), required that states take account of expenses reasonably attributable to the earning of income in calculating monthly income levels for purposes of AFDC benefit determinations. Section 402(a)(8) of the Act, 42 U.S.C. (1976 ed.) 602(a)(8), required that states disregard the first $30 of a family's earned income, plus one third of the remainder. Section 402(a)(8) also required disregard of the earned income of full-time students and permitted income to be set aside for the future needs of a dependent child. These "disregards" were intended to serve as work incentives. See, *e.g.,* S. Rep. 1589, 87th Cong., 2d Sess. 17-18 (1962); H.R. Rep. 544, 90th Cong., 1st Sess. 106 (1967).

Congress made significant changes in the method of determining AFDC entitlement when it enacted the Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub. L. No. 97-35, 95 Stat. 357 *et seq.* Under the new statute, a family was not eligible to receive AFDC benefits if its gross income exceeded 150% of a state's standard of need. See 42 U.S.C. 602(a)(18). Congress also altered or eliminated several of the work incentive disregards, because, in Congress's view, these disregards had not helped AFDC recipients attain self-sufficiency through employment. See S. Rep. 97-139, 97th Cong., 1st Sess. 502 (1981). Under OBRA, the "$30 plus one-third" disregard was restricted to the first four months in which an AFDC recipient was employed. 42 U.S.C. 602(a)(8)(A)(iv) and (B)(ii). Congress also limited to

$75 the (previously open-ended) deduction for work expenses and altered the sequence of the $30 plus one-third disregard. See 42 U.S.C. 602(a)(8)(A)(ii); H.R. Rep. 97-208, 97th Cong., 1st Sess. 978-979 (1981). Congress coupled these changes with "provisions * * * aimed at providing employment for AFDC recipients" (S. Rep. 97-139, *supra,* at 502-503).

2. Petitioners lost their AFDC benefits as a result of the OBRA changes. Under OBRA, the State of Maine disregarded less of petitioners' income than before, with the result that petitioners' adjusted, or "countable," income exceeded the ceiling for receipt of AFDC benefits. In addition, the gross income of some petitioners was more than 150% of the state standard of need (the threshold cut-off for AFDC eligibility under OBRA). See Pet. App. C14, C16. In light of their loss of AFDC benefits, petitioners contended that they were entitled to four additional months of Medicaid coverage pursuant to 42 U.S.C. 1396a(e)(1). Under that provision, a family's Medicaid coverage continues for four months if loss of AFDC eligibility results from "increased hours of, or increased income from, employment."[1]

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[1]42 U.S.C. 1396a(e)(1) provides in pertinent part:

> Notwithstanding any other provision of this subchapter, effective January 1, 1974, each State plan approved under this subchapter must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of subchapter IV of this chapter in at least 3 of the 6 months immediately preceding the month in which such family became ineligible for such aid because of increased hours of, or increased income from, employment, shall, while a member of such family is employed, remain eligible for [Medicaid] assistance * * * for 4 calendar months beginning with the month in which such family became ineligible for aid under the plan approved under part A of subchapter IV of this chapter because of income and resources or hours of work limitations contained in such plan.

Following a hearing, the Maine Department of Human Services determined that petitioners were not eligible to receive an additional four months of Medicaid coverage. The Department ruled that petitioners had lost their AFDC eligibility not as a result of an increase in income from employment, as required under Section 1396a(e)(1), but rather because the statutory criteria for AFDC eligibility had changed. Pet. App. A3-A4, B4.

3. Petitioners brought this action against the Commissioner of the Maine Department of Human Services in the Maine Superior Court, Kennebec County. The Superior Court certified a class of all families in Maine who had lost or would lose their AFDC grants because their "countable income from employment" increased by operation of OBRA and who otherwise met the requirements of Section 1396a(e)(1) for four additional months of Medicaid coverage (Pet. App. B1-B2, C5-C6). The Superior Court affirmed the decision of the Department of Human Services on the ground that the plain language of Section 1396a(e)(1) did not support petitioners' claim to additional Medicaid coverage (Pet. App. B1-B7).

4. The Supreme Judicial Court of Maine affirmed (Pet. App. A1-A11). That court reasoned that (*id.* at A11)

> [petitioners'] loss of eligibility for AFDC payments did not result from any real increase in income, but from a reformulation under OBRA of the eligibility standard. Section 1396a(e)(1), while ameliorative, was never meant to redress all instances where AFDC benefits are cut off. We would have to disregard the statutory language to hold that an administrative change in eligibility criteria is equivalent to an increase in income from employment.

DISCUSSION

Petitioners contend that under 42 U.S.C. 1396a(e)(1) they were entitled to an additional four months of Medicaid coverage after their AFDC benefits ceased as a result of changes in the AFDC eligibility criteria made by the Omnibus Budget Reconciliation Act of 1981. Congress has already provided the relief sought by some class members; as to them, the case is therefore moot. The contentions of the remaining class members are without merit. The courts below correctly held that Section 1396a(e)(1) does not confer any statutory entitlement to the additional Medicaid coverage petitioners seek. Further review of petitioners' claim is not warranted.

1. One of the changes made by OBRA was the imposition of a four-month limitation on disregard of the first $30 of a family's earned income plus one-third of the remainder.[2] In July 1984, Congress acted to mitigate the effect of this change. Section 2624 of the Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 1134, provides a "work transition allowance" for families that otherwise would lose both AFDC benefits and the right to Medicaid coverage as a result of statutory changes in the $30 plus one-third disregard. Section 2624 requires that a state provide Medicaid coverage for a period of nine months after the termination of AFDC benefits whenever such termination results from application of a statutory limitation on the $30 plus one-third disregard, including the OBRA four-month limit on

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[2]The two named petitioners contend that they lost their AFDC benefits as a result of the OBRA provision that denies AFDC eligibility to families whose total income exceeds 150% of the state standard of need. See Pet. App. C14, C16. However, the two other reported decisions that have addressed the issue raised in this case have involved individuals who lost AFDC benefits because of the four-month limitation on the $30 plus one-third disregard. See *Phillips* v. *Noot*, 728 F.2d 1175 (8th Cir. 1984); *Edwards* v. *Myers*, 161 Cal. App.3d 129, 207 Cal. Rptr. 336 (1984).

that disregard; in addition, the state may choose to extend Medicaid coverage for an additional six months in such circumstances. This new provision applies to all families that "ceased to receive aid under the applicable State plan * * * before October 1, 1984, as well as with respect to families which cease to receive aid * * * on or after that date." 98 Stat. 1135. The conference committee report that accompanied the Deficit Reduction Act emphasizes that "[f]amilies eligible for the allowance include those who lose eligibility for regular AFDC benefits in the months following enactment, as well as those who have previously been terminated from the AFDC rolls because of the loss of the $30 plus one-third disregard." H.R. Rep. 98-861, 98th Cong., 2d Sess. 1394 (1984).

Under this new legislation all members of the petitioning class who lost their AFDC eligibility because of the OBRA four-month limit on the $30 plus one-third disregard are eligible to receive Medicaid coverage for an additional period of at least nine months, so long as they meet certain statutory requirements.[3] Since the new statute gives these

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[3]Section 2624 of the Deficit Reduction Act provides that a family that lost AFDC eligibility prior to October 1, 1984, on account of the four-month limit on the $30 plus one-third disregard must apply for the additional nine months of Medicaid coverage by the end of the sixth month after the month in which the Secretary of Health and Human Services promulgates regulations governing application of Section 2624; must be a family that otherwise would have been continuously eligible to receive AFDC benefits under the state plan from the time it ceased to receive such benefits if the $30 plus one-third disregard in fact had been applied; and must disclose any health insurance coverage its members may have in effect. 98 Stat. 1135. The Secretary promulgated interim final regulations governing application of Section 2624 on September 10, 1984. 49 Fed. Reg. 35586, 35601-35602. The introduction to the regulations states that in implementing Section 2624, "States should make all reasonable efforts to notify former recipients who may be eligible under this provision through contacts with local media, posters in public areas or other appropriate means." 49 Fed. Reg. 35595

individuals more Medicaid coverage than the four months they seek here, the case is moot as to them.[4]

2. Some members of the petitioning class lost AFDC eligibility as a result of OBRA changes other than the four-month limit on the $30 plus one-third disregard, *e.g.*, the limitation of the work expense disregard to $75 or the threshold requirement that gross income not exceed 150% of the state standard of need. The Deficit Reduction Act of 1984 does not provide additional Medicaid coverage for

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(1984). Under the regulations, the additional Medicaid coverage for families that ceased to receive AFDC benefits prior to October 1, 1984, begins with the month the family applies for Medicaid and meets the statutory conditions. *Id.* at 35601-35602.

We advised petitioners' counsel in December 1984 of the existence of Section 2624 of the Deficit Reduction Act.

[4]It appears from the complaint (Pet. App. C23) that petitioners do not seek Medicaid coverage for the four-month period immediately following loss of their AFDC benefits; rather, they seek four months of Medicaid coverage on a current basis, which is the relief afforded by the Deficit Reduction Act.

Members of the petitioning class who lost AFDC benefits as a result of the four-month limit on the $30 plus one-third disregard might take the position that they are entitled to four months of Medicaid coverage in addition to the extra Medicaid coverage provided under Section 2624 of the Deficit Reduction Act. That position could not withstand scrutiny. Congress enacted Section 2624 in the belief that those in petitioners' position were not entitled to receive four months of Medicaid coverage pursuant to 42 U.S.C. 1396a(e)(1). See page 5, *infra*. Thus, Congress could not have meant for an individual to benefit from both provisions.

In his brief in opposition (at 7) respondent suggests that some class members may have continued to enjoy Medicaid coverage after their AFDC benefits were terminated if they qualified as "medically needy" under the State of Maine's Medicaid plan. See 42 U.S.C. 1396a(a)(10)(A)(ii), 1396d(a). Medicaid coverage available to the medically needy generally is less extensive than that available to those receiving AFDC benefits. However, if some class members did receive Medicaid coverage equivalent to what they would have enjoyed if they had continued to be AFDC recipients, the case also would be moot as to them.

these petitioners, so the case is not moot as to them.[5] However, it is clear that the courts below interpreted Section 1396a(e)(1) correctly and that petitioners are not entitled to the relief they seek under that provision.

Section 1396a(e)(1) states that an additional four months of Medicaid coverage is available to those who lose AFDC eligibility because of "increased hours of, or increased income from, employment." Petitioners admittedly did not have increased hours of employment. Nor did they have "increased income from * * * employment." As the courts below recognized (Pet. App. A9-A10, B5), the plain meaning of that language is additional wages received in compensation for employment. Accord, *Edwards* v. *Myers,* 161 Cal. App.3d 129, 207 Cal. Rptr. 336, 339 (1984). Petitioners acknowledge that "[t]heir gross earnings from employment did not change" (Pet. 6); rather, they lost AFDC benefits as a result of changes in the statutory eligibility criteria. Thus, petitioners do not come within the language of Section 1396a(e)(1).

Petitioners contend (Pet. 3-4) that the phrase "increased income from * * * employment" refers not to increases in wages, but to increases in "countable income," *i.e.,* that income used to determine AFDC eligibility, or income remaining after all applicable deductions and disregards have been taken. But that is not the natural reading of the statute. And nothing in the legislative history of Section 1396a(e)(1) suggests that Congress was referring to loss of AFDC eligibility for a reason other than an increase in

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[5]Even as to a portion of these petitioners, the case may well be moot. The Deficit Reduction Act liberalizes somewhat the criteria for AFDC eligibility. For example, Section 2621 of the Deficit Reduction Act, 98 Stat. 1134, raises the gross income limit from 150% to 185% of the state standard of need. Any petitioners who are now receiving AFDC benefits as a result of these liberalizing changes are automatically eligible for Medicaid coverage.

wages. The portion of the Senate report that referred to that provision makes clear that Congress was concerned with situations in which AFDC recipients had the opportunity to earn higher wages:

> [A] person might not want to seek greater earnings since additional earnings could make him ineligible for medicaid, with the result that he would lose medical benefits worth many times more than the dollar of marginal income which moved him off the cash assistance rolls. This so called "medicaid notch" is both inequitable and a disincentive to work.

S. Rep. 92-1230, 92d Cong., 2d Sess. 220 (1972). See also *id.* at 221 (referring to loss of AFDC eligibility because of "changes in earnings").

Congress confirmed this understanding of Section 1396a(e)(1) when it enacted the Deficit Reduction Act of 1984. In describing the need for Section 2624 (the "work transition allowance" provision), the House committee explained that families that lost AFDC eligibility as a result of the OBRA four-month limit on the $30 plus one-third disregard were not eligible for an additional four months of Medicaid coverage pursuant to Section 1396a(e)(1):

> The Omnibus Budget Reconciliation Act of 1981 significantly changed the method for calculating countable income in the AFDC program. As a result of these changes, many working AFDC families lose AFDC eligibility and the Medicaid coverage that is automatically extended to AFDC recipients when the 4-month limit on the work incentive is imposed. If these families became ineligible due to increased earnings, they would receive an additional four months of Medicaid. However, since their ineligibility is the result of fewer deductions (and not increased earnings), they are not assured of continued health coverage, unless the State

had chosen to offer supplemental health benefits (known as a medically needy program).

H.R. Rep. 98-664, 98th Cong., 2d Sess. 14 (1984). Similarly, the conference committee observed that under Section 1396a(e)(1) "[c]ategorical medicaid eligibility is retained after the loss of AFDC eligibility only in the case of families whose earnings increase to the point that they would be ineligible even if the $30 plus one-third disregard were applied." H.R. Rep. 98-861, *supra,* at 1393. Thus, it is clear that Congress understood Section 1396a(e)(1) to apply only to AFDC recipients who lost benefits because their actual wages increased, not to those like petitioners, whose "countable income" increased as a result of changes in the statutory eligibility criteria.[6] This congressional understanding is entitled to substantial weight. See, *e.g., Bell* v. *New Jersey,* 461 U.S. 773, 784 (1983).

3. Petitioners contend (Pet. 10-13) that review is warranted because the decision below conflicts with *Phillips* v. *Noot,* 728 F.2d 1175 (8th Cir. 1984). The plaintiffs in *Phillips* had lost AFDC eligibility as a result of OBRA's four-month limit on the $30 plus one-third disregard. The Eighth Circuit held that the plaintiffs were entitled to an additional four months of Medicaid coverage under Section 1396a(e)(1) because, in the court's view, the phrase "income from * * * employment" used in that section refers to "countable income," not to wages.

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[6]Congress also made clear in Section 2625(a) of the Deficit Reduction Act, 98 Stat. 1135 (entitled "Clarification of Earned Income Provision"), that the term "earned income," as used in the AFDC statute, refers to gross earned income, not to income after deductions and disregards. Cf. *Heckler* v. *Turner,* No. 83-1097 (Aug. 10, 1984) (Rehnquist, Circuit Justice). That provision strongly suggests that the term "income from * * * employment," used in Section 1396a(e)(1) in reference to the AFDC program, signifies gross income from wages, not gross income less applicable deductions and disregards.

For the reasons discussed above, we believe the Eighth Circuit's holding in *Phillips* is inconsistent with both the language and legislative history of Section 1396a(e)(1).[7] However, *Phillips* was decided before the passage of the Deficit Reduction Act. The Eighth Circuit might well decide that case differently now in light of the legislative history that accompanied the new statute (see pages 9-10, *supra*). Moreover, as respondent points out (Br. in Opp. 3, 6), the issue in this case and in *Phillips* relates to a one-time loss of Medicaid coverage as a result of an event (the passage of OBRA) that occurred more than three years ago; thus, the issue cannot be regarded as one of continuing importance. Finally, Congress provided relief in the Deficit Reduction Act for individuals in the situation of the plaintiffs in *Phillips, i.e.*, those who lost AFDC benefits because of the four-month limit on the $30 plus one-third disregard. See pages 5-6, *supra*. For these reasons, the conflict between Phillips and the decision below does not warrant review by this Court.[8]

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[7]The court in *Phillips* believed that its reading of Section 1396a(e)(1) was consistent with the legislative purposes underlying that provision because a refusal to extend additional Medicaid coverage to individuals who had lost their AFDC benefits as a result of the OBRA four-month limitation on the $30 plus one-third disregard might discourage AFDC recipients from continuing to work and result in a sudden loss of medical care. See 728 F.2d at 1177-1178. We doubt that individuals would stop working merely as a result of the OBRA changes; indeed, the plaintiffs in *Phillips* had continued to work. In any event, the considerations cited by the court in *Phillips* are insufficient to overcome the clear indications in the language and legislative history of Section 1396a(e)(1) that Congress wished to provide additional Medicaid coverage only to those individuals who had lost AFDC benefits as a result of increases in their hours of employment or wages.

[8]This Court is now considering *Heckler* v. *Turner*, No. 83-1097 (argued Oct. 9, 1984), which involves deduction from "income" of the $75 work expense disregard under the AFDC statute, 42 U.S.C. 602(a)(7). In deciding *Turner*, the Court may have occasion to comment on the meaning of the term "income" as it is used in the AFDC statute,

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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which in turn might be of some relevance to the issue raised in this case (see note 6, *supra*). However, the issues in the two cases are only tangentially related, and there are independent reasons why review is not warranted in this case. Thus, there is no need to hold this case pending a decision in *Turner*.

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